

Amendment No. 1 to HB0513

Curcio
Signature of Sponsor

AMEND Senate Bill No. 452*

House Bill No. 513

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 4-29-239(a), is amended by deleting subdivision (43).

SECTION 2. Tennessee Code Annotated, Section 4-29-242(a), is amended by inserting the following language as a new, appropriately designated subdivision:

() Tennessee board of judicial conduct, created by § 17-5-201;

SECTION 3. Tennessee Code Annotated, Section 17-5-201, is amended by deleting the section and substituting instead the following:

(a) There is created the board of judicial conduct to consist of sixteen (16) members to be selected in the following manner:

(1) One (1) current or former trial judge, to be appointed by the Tennessee judicial conference;

(2) Two (2) current or former general sessions court judges, to be appointed by the Tennessee general sessions judges conference;

(3) One (1) current or former municipal court judge, to be appointed by the Tennessee municipal judges conference;

(4) One (1) current or former juvenile court judge, to be appointed by the Tennessee council of juvenile and family court judges;

(5) One (1) current or former court of appeals or court of criminal appeals judge, to be appointed by the Tennessee judicial conference;

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(6) Five (5) members of the public who are not salaried judges, one (1) of whom shall be an attorney who regularly practices in the courts of this state and four (4) of whom shall be neither a judge nor an attorney, to be appointed by the speaker of the senate; and

(7) Five (5) members of the public who are not salaried judges, one (1) of whom shall be an attorney who regularly practices in the courts of this state and four (4) of whom shall be neither a judge nor an attorney, to be appointed by the speaker of the house of representatives.

(b) The board shall select its own chair from among the current or former judges serving on the board. The board also shall select a vice chair and shall select one (1) member to serve as a direct liaison to the members of the general assembly.

(c)

(1) All appointments to the board must be made by July 1, 2019.

(2) In order to stagger the terms of the newly appointed board members, initial appointments must be made as follows:

(A) The members appointed under subdivisions (a)(1)-(3) serve initial terms of one (1) year, which expire on June 30, 2020;

(B) The member appointed under subdivision (a)(4) and the members appointed under subdivision (a)(6) serve initial terms of two (2) years, which expire on June 30, 2021; and

(C) The member appointed under subdivision (a)(5) and the members appointed under subdivision (a)(7) serve initial terms of three (3) years, which expire on June 30, 2022.

(3) Following the expiration of members' initial terms as prescribed in subdivision (c)(2), all three-year terms begin on July 1 and terminate on June 30, three (3) years thereafter.

(d) Each member of the board is eligible for reappointment to one (1) additional term. Vacancies on the court for an unexpired term are to be filled for the remainder of the term in the same manner that original appointments are made but are for the duration of the unexpired term only.

(e)

(1) The chair shall divide the board into investigative panels of three (3) members and hearing panels of five (5) members. Each investigative panel is composed of two (2) public members and one (1) member who is a current or former judge. The chair shall not serve as a permanent member of an investigative panel or a hearing panel but may serve as a member of a panel on a temporary basis to fill a vacancy. Membership on the panels may rotate in a manner determined by the chair; however, a member shall not sit on both the hearing and investigative panels for the same proceeding.

(2) A hearing panel has the duty and authority to rule on prehearing motions, conduct hearings on formal charges and make findings, conclusions, and impose sanctions or dismiss the case.

(3)

(A) An investigative panel has the duty and authority to:

(i) Review the recommendations of disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint; and

(ii) Review the recommendations of disciplinary counsel after a full investigation and approve, disapprove, or modify the recommendations as provided in § 17-5-304.

(B) The investigative panel shall require a full investigation where the motion to dismiss the complaint fails to receive a unanimous vote from the panel and where the motion to authorize the full investigation passes by a majority vote of the panel.

(4) An attorney member of the board shall not sit on an investigative or hearing panel if the attorney has ever appeared before the judge against whom the complaint is filed.

(5)

(A)

(i) A current or former judge who serves on the board and is the subject of a full investigation by the board or is a party to a hearing before the board must take a temporary leave of absence from the board pending the completion of such action.

(ii) A citizen member of the board must recuse himself or herself to avoid any impropriety, appearance of impropriety, or conflict of interest relating to the person's duties as a board member and matters that may come before the board.

(B) A current or former judge whose conduct results in the board taking disciplinary action against the judge will result in the judge's automatic dismissal from the board, creating a vacancy to be filled by the appropriate appointing authority.

(C) If a member recuses himself or herself or is dismissed pursuant to this subdivision (e)(5) all board matters may be heard by the remaining members of the board or, at the option of the members, a temporary replacement may be designated from the board by a majority vote of such members to sit on any investigative or hearing panel the recused or dismissed member was on.

(f) The appointing authorities, in making their appointments, shall strive to ensure the makeup of the board reflects the diversity of persons in Tennessee.

SECTION 4. Tennessee Code Annotated, Section 17-5-207(e), is amended by deleting the subsection and substituting instead the following:

(e)

(1) The board shall adopt by rule a formal records retention policy and shall review such policy on an annual basis to determine if changes should be made.

(2)

(A) Notwithstanding any law or administrative rule to the contrary, the general assembly shall have limited access to board records as authorized under this subdivision (e)(2).

(B) The speaker of the senate and the speaker of the house of representatives shall each appoint two (2) members of the majority party

and one (1) member of the minority party from each house who may request access to investigative reports and any other record compiled by the board pursuant to this chapter.

(C) The members appointed under subdivision (e)(2)(B) shall meet annually with the chair of the board and the investigative counsel to review all decisions relating to complaints for which formal charges have been filed based on the recommendation of an investigative panel.

(D) Any information obtained by or disclosed to a member of the general assembly pursuant to a request for records under this subsection (e) is confidential and is not deemed to be a public record.

SECTION 5. Tennessee Code Annotated, Section 17-5-304(a), is amended by adding the following language at the end of the subsection:

The disciplinary counsel shall commence the evaluation within thirty (30) days of the date the complaint was filed.

SECTION 6. Tennessee Code Annotated, Section 17-5-304(c)(3), is amended by deleting the subdivision and substituting instead the following:

(3) The investigative panel shall review the disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation, subject to the requirements of § 17-5-201(e)(3)(A)(ii). Disciplinary counsel must not have the authority to dismiss a complaint without the review of and approval by the investigative panel.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.